



IT IS ORDERED as set forth below:

James E. Massey

Date: April 29, 2013

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 13-52212

Edwin Oneal Thompson,

CHAPTER 7

Debtor.

JUDGE MASSEY

Christopher S. Bowen and Scottie Wilson,

Movants,

v.

CONTESTED MATTER

Edwin Oneal Thompson,

Respondent.

ORDER ON MOTION FOR DECLARATORY JUDGMENT

In this contested matter, Movants Christopher S. Bowen and Scottie Wilson seek a declaration that as of the date this case was commenced, they had a right superior to that of Debtor Edwin Oneal Thompson in the proceeds of a garnishment that took place in 2010 but were not disbursed by the state court until after Thompson filed this bankruptcy case. Thompson

contends that the funds are property of his bankruptcy estate. The court held a hearing on the motion on April 29, 2013.

A. Facts and Contentions.

The facts are not in dispute. In July 2010, Bowen and Wilson obtained a judgment against in a Georgia court; Thompson never appeared in that case. In August 2010, they served Thompson's employer with a summons of continuing garnishment issued by the same court. Thereafter, the employer paid to the state court over several months wages it owed to Thompson totaling \$2,380.15. In October 2010, Bowen and Wilson filed an application with that court for disbursement of \$590 out of garnished funds, but the court never made that disbursement. Thompson never filed a traverse to the garnishment and has not contended that he had any basis on which to do so.

On January 30, 2013, the attorney for Movants filed in the state court a motion for disbursement of the garnished funds. There is no evidence that the state court entered an order granting the motion prior to February 4, 2013, when Thompson filed a petition commencing this bankruptcy case. Thereafter, the clerk of the state court issued a check dated February 18, 2013 payable to Movants' attorney in the amount of \$2,380.15, and Movants' attorney deposited the funds in her escrow account.

Movants seek a declaratory judgment that Thompson has no interest in the garnished funds because (1) they have a lien on the garnished funds, (2) he defaulted in the case in which Movants obtained the judgment against him, (3) he failed to file a traverse to the garnishment or to respond to Movants' motions seeking the payout of those funds, and (4) he failed to list the funds as property in this bankruptcy proceeding.

Citing *In re Williams*, 460 B.R. 915 (Bankr.N.D.Ga. 2011) (holding that the garnished wages of an individual remaining undistributed at the time the individual filed bankruptcy were property of her bankruptcy estate), the Debtor contends that the garnished funds became property of his bankruptcy estate and that because the court granted his motion to avoid Movants' lien, as to which Movants did not respond, Movants should be directed to turn over the garnished funds to the Debtor.

B. Applicable Law.

The first step in deciding the motion is to determine the applicable law. Section 541(a)(1) of the Bankruptcy Code provides:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541(a)(1). None of the exceptions in subsections (b) and (c)(2) are applicable. The garnished funds are property of the estate if Thompson had a legal or equitable interest in those funds as of the commencement of his bankruptcy case.

Generally speaking, the extent of a debtor's interest in property as of the commencement of a bankruptcy case is a question of state law. *Nobelman v. American Sav. Bank*, 508 U.S. 324, 329, 113 S.Ct. 2106, 2110 (1993) ("In the absence of a controlling federal rule, we generally assume that Congress has 'left the determination of property rights in the assets of a bankrupt's estate to state law,' since such '[p]roperty interests are created and defined by state law.' *Butner v. United States*, 440 U.S. 48, 54–55, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979)."); *In re Builders*

Transport, Inc., 471 F.3d 1178, 1185 (11th Cir.2006). Because the funds at issue were garnished in a Georgia state court proceeding, Georgia law determines the extent of the interests of any party claiming an interest in those funds. *In re Williams, supra*.

C. Interest in Garnished Funds under Georgia Law.

The second step in resolving this dispute is to determine the extent of the interests of Thompson and of Movants under Georgia law in funds paid into the registry of the state court by Thompson's employer.

The service of a summons of garnishment on a defendant's employer creates a lien in favor of the plaintiff on all debts owed by the garnishee to the defendant, subject to the limitations in the amount of disposable earnings that may be garnished. O.C.G.A. § 18-4-20(b) and (d); *In re Conner*, 733 F.2d 1560, 1562 (11th Cir. 1984). Hence, after service of the summons of garnishment on Thompson's employer, the debt it then owed and thereafter owed to Thompson (subject to the limitations on garnishment of disposable earnings) became subject to Movants' lien.

Where a garnishment captures a debt owed by the garnishee to the judgment debtor, the garnishee is required to pay the amount of the debt to the clerk of the court that issued the summons of garnishment. O.C.G.A. § 18-4-84. Because Thompson had a property interest in his claim against his employer, it follows that he had a property interest in garnished funds. O.C.G.A. § 18-4-94(a) reflects this conclusion:

(a) Where the defendant prevails upon the trial of the issues made by his traverse, the garnishment case shall be dismissed by the court; and *any money or other property belonging to the defendant in the possession of the court* shall be restored to the defendant unless a claim thereto has been filed.

(Emphasis added.) It would be illogical to assume that when a garnishee pays a debt owed to the defendant into the registry of the court, those funds, which are the proceeds of a property interest of the defendant, would not be property of the defendant. Otherwise, garnished funds would belong to an entity other than the defendant following the court's receipt of them but would miraculously turn into property of the defendant if and when the defendant prevailed. There is not the slightest hint of such a metamorphosis in Georgia garnishment law.

Movants' contention that the default in the underlying action against Thompson deprived him of any property interest in the funds paid to the state court in the subsequent garnishment proceeding is frivolous. They have cited no law to support that proposition. The Georgia garnishment statutes do not state or imply that in a garnishment proceeding a default judgment is treated any differently than any other judgment.

Their contentions that Thompson ceased to have any interest in the garnished funds because he failed to file a traverse to their affidavit of garnishment and because he failed to oppose their motions to disburse the garnished funds are also without merit. O.C.G.A. § 18-4-65 permits a defendant to file a traverse to a plaintiff's affidavit to challenge the existence of, or amount claimed on, a judgment. But this section does not set a deadline by which a traverse must be filed and does not state or imply that the failure to file a traverse divests the defendant of any interest in garnished property.

Similarly, O.C.G.A. § 18-4-89(a) authorizes a clerk to disburse garnished funds where "no traverse or claim has been filed within 15 days after the garnishee's answer is filed," but that section does not state that the passage of the 15-day period divests the defendant of any interest in the garnished funds. Nor does it provide that failing to file a traverse within the 15-day period

bars the defendant from thereafter filing one. Although the section authorizes the clerk to disburse the garnished funds, it does not specify when the clerk must do so and does not preclude the need for a court order directing the clerk to disburse funds. The usual method for obtaining a disbursement under this section is the filing of a motion for such an order, which Movants did twice in the garnishment proceedings at issue.

Georgia law does, however, establish a deadline for the *timely* filing of a traverse by a defendant or of a claim to garnished property by a third party. O.C.G.A. § 18-4-93 provides in relevant part:

... [A]t any time before a judgment is entered on the garnishee's answer or before money or other property subject to garnishment is distributed, the defendant may become a party to the garnishment for the purposes set out in Code Section 18-4-65 by filing a traverse to the plaintiff's affidavit stating that the affidavit is untrue or legally insufficient; and he shall be a party to all proceedings thereafter. ...

O.C.G.A. § 18-4-95 provides:

At any time before judgment is entered on the garnishee's answer or money or other property subject to garnishment is distributed, any person may file a claim in writing under oath stating that he has a claim superior to that of the plaintiff to the money or other property in the hands of the garnishee subject to the process of garnishment; and the claimant shall be a party to all further proceedings upon the garnishment.

“Georgia's garnishment statutes, OCGA § 18–4–1 et seq., are “in derogation of the common law and, thus, must be strictly construed [.]” (Citation and punctuation omitted.) *Wachovia Bank of Ga. v. Unisys Finance Corp.*, 221 Ga.App. 471, 474, 471 S.E.2d 554 (1996).” *A.M. Buckler & Associates, Inc. v. Sanders*, 305 Ga.App. 704, 704-705, 700 S.E.2d 701, 702 (Ga.App. 2010). Strictly construed, these statutes do not support the contention of Movants that mere failure to file a traverse or to appear in opposition of motions to disburse funds had any effect on Thompson’s interest in the undistributed garnished funds where the state court had not entered a prepetition judgment awarding the funds to Movants.

In the *A.M. Buckler* case, the plaintiff commenced a garnishment proceeding against Augusta National, Inc. to collect a debt that Augusta National allegedly owed to defendant C.R. Sanders, Inc. Augusta National answered that it owed money to the defendant and paid those funds into the registry of the court. The defendant never filed a traverse to the plaintiff's affidavit. More than 15 days after Augusta National filed its answer, Joe Sanders, d/b/a Sanders Golf, intervened and claimed that Augusta National owed the debt only to him. On appeal of a judgment in favor of Sanders Golf, Buckler, citing an inapplicable code section, argued that because Sanders Golf had not filed a claim within 15 days after Augusta National answered, its claim should have been rejected by the trial court. The court of appeals affirmed, holding that under section 18-4-95 the notice of claim was timely "because Sanders Golf filed a claim before the court had entered judgment in the garnishment action or ordered the distribution of the money at issue." *A.M. Buckler*, 305 Ga. App. at 705. The operative language in section 18-4-93 is virtually identical to that in section 18-4-95. Hence, the reasoning of the court in *A.M. Buckler* invalidates the argument of Movants that Thompson had no interest in the garnishment funds when he filed this case because as of the petition date, the state court had not entered a judgment foreclosing Movants' lien and had not disbursed the funds.

Two published decisions of bankruptcy courts in the Middle District of Georgia reached a different result, concluding that funds garnished from wages before the employee files a bankruptcy estate are not property of the defendant's bankruptcy estate, even if the garnished funds have not been distributed. *Flournoy v. Pate (In re Antley)*, 18 B.R. 207 (Bankr.M.D.Ga. 1982) and *In re Lord*, 270 B.R. 787 (Bankr.M.D.Ga. 1998).

In *In re Williams*, 460 B.R. at 918-19, Judge Drake discussed the *Antley* case in some detail and explained why he would not follow its conclusion that the debtor had no property interest in garnished funds that had not been distributed as of the petition date. The *Antley* court held that the debtor had to have filed a traverse in the garnishment proceeding prior to the petition date in order to preserve an interest in the garnished property. Movants make the same mistake in asserting that Thompson's failure to appear in the garnishment proceeding by filing a traverse or opposing their motions to disburse funds divested him of any interest in the garnished funds. This proposition finds no support in Georgia garnishment law. As O.C.G.A. § 18-4-93 and the holding of the court of appeals in *A.M. Buckler* under O.C.G.A. § 18-4-95 make clear, the interest of a defendant or that of a third party in garnished funds cannot be extinguished prior to a distribution or a judgment directing a distribution of garnished funds. The court in the *Lord* case relied on *Antley* and on an unpublished decision with no discussion or analysis of Georgia garnishment law and hence is no more persuasive than *Antley*.

D. Effect of Bankruptcy Proceedings.

The third and final step in this process is to decide the effect of the filing of the bankruptcy case on the transfer of the funds by the state court to Movants' attorney and on Movant's lien and the effect of entry of an order granting Thompson's motion to avoid Movants' lien.

The filing of this bankruptcy case had no effect on Movants' lien on the garnished funds, see *Dewsnup v. Timm*, 502 U.S. 410, 417-419, 112 S.Ct. 773, 778-779 (1992), but it froze the respective interests of Movants and Thompson in the garnished funds as of that time.

Movants contend that only the state court should determine what interest that Thompson had when he filed his case. But this argument runs headlong into the automatic stay, which arises

upon commencement of a bankruptcy case. The automatic stay is applicable to all entities, including state courts, and bars “the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case,” 11 U.S.C. § 362(a)(2), any act to exercise control over property of the estate or to enforce a lien against such property, 11 U.S.C. § 362(a)(3) and (a)(4). Sending the matter to the state court to enforce the lien would require relief from the automatic stay, which the motion does not request, and the motion did not and could not allege facts that would constitute cause for stay relief under 11 U.S.C. § 362(d).

Because the garnished funds were property of Thompson’s bankruptcy estate when this case was filed, the postpetition transfer of the funds by the state court to Movants’ attorney violated the automatic stay, whether or not the clerk of the state court or Movants’ attorney were aware of the pendency of this case. “Actions taken in violation of the automatic stay are void and without effect.” *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306, 1308 (11th Cir. 1982).

On February 8, 2013, Thompson filed a motion to avoid the Movants’ lien on the garnished funds. Movants did not file a response to, or request a hearing on, that motion. Movants’ lien resulted from a judicial process, is a “judicial lien” within the meaning of that term in 11 U.S.C. § 101(36) and is avoidable under 11 U.S.C. § 522(f). Contrary to the contention of Movants in their motion, the Debtor fully disclosed the existence of his property interest in the garnished funds on Schedule B and exempted them from property of the estate on Schedule C. No party in interest filed an objection to the Debtor’s exemption of those funds. On April 10, 2013, the court entered an order granting the Debtor’s motion to avoid Movants’ judicial lien, but that determination is subject to the condition that this case is not dismissed, as provided in 11 U.S.C. § 522(c).

The court is sympathetic to Movants' situation. They obtained a legitimate judgment against the Debtor and had almost completed a garnishment proceeding. They were presumably unaware of the steps they needed to take to obtain a disbursement of the garnished funds. When they did so, it was too late, because the funds remained in the possession of the state court on the petition date. The court has no equitable power to alter the result reached here.

Based on this analysis, Movants' motion is GRANTED insofar as it seeks a determination that they hold a lien on the garnished funds. (Movants still hold a lien because the condition in the order avoiding the lien that there be no dismissal will not be met until the case is closed without a dismissal order having been entered.) Otherwise, Movants' motion is DENIED. Movants' counsel is directed to pay, within two (2) business days of entry of this order, to counsel for the Debtor the sum of \$2,380.15 obtained from the state court, and counsel for Debtor is directed to deposit and hold those funds in an escrow account until this order becomes final and not subject to appeal and this case is closed without a dismissal order having been entered. The transferred funds shall remain subject to the lien of Movants in the hands of Debtor's counsel until these conditions permitting Debtor's counsel to disburse the funds are met.

The Clerk is directed to serve a copy of this order on counsel for Movants, the Debtor, the Debtor's counsel and the Chapter 7 Trustee.

END OF ORDER